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EDITED BY BENJAMIN F. SHAMBAUGH

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Work Accident Indemnity in Iowa

BY

E. H. DOWNEY

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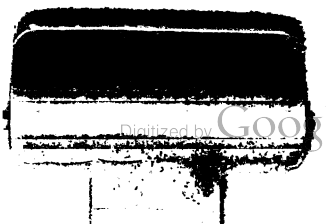

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EDITOR'S INTRODUCTION

THIS paper on *Work Accident Indemnity in Iowa,* as well as the volume on the *History of Work Accident Indemnity in Iowa,* is the outgrowth of the author's study of the *History of Labor Legislation in Iowa,* which was published by The State Historical Society of Iowa some two years ago in the *Iowa Economic History Series.* Dealing with the vital subject of employers' liability and workmen's compensation, Professor Downey's paper will, it is thought, be found especially helpful to those interested in present-day legislation.

BENJ. F. SHAMBAUGH

OFFICE OF THE SUPERINTENDENT AND EDITOR
THE STATE HISTORICAL SOCIETY OF IOWA
IOWA CITY 1912

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AUTHOR'S PREFACE

THE following paper on *Work Accident Indemnity in Iowa* is substantially an abridgment of the author's *History of Work Accident Indemnity in Iowa,* as published in the *Iowa Economic History Series.* To state the main results of the longer work in a simpler and more concise form is, indeed, the purpose of this contribution to the *Iowa Applied History Series.* Accordingly, the discussion of the common law and the more historical parts generally are omitted, while the outline of indemnity systems in other States and countries is greatly condensed.

Citations to authorities for all statements of fact, as well as for many of the general principles advanced, will be found in the *Notes and References* of the longer work. Acknowledgments for assistance received by the author have been fully made in the preface to the book referred to and so are omitted here.

E. H. DOWNEY

THE UNIVERSITY OF WISCONSIN
MADISON WISCONSIN

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CONTENTS

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I

THE NEED OF WORK ACCIDENT INDEMNITY

It has become clear to all informed persons that the employers' liability law of Iowa as it now stands no longer serves the ends of social justice. Both the Iowa Federation of Labor and the State Manufacturers' Association have demanded the abrogation of the existing law in favor of a system based on fundamentally different principles. The Iowa Employers' Liability Commission, created under the authority of the Thirty-fourth General Assembly, has recommended a compensation act on lines novel to the jurisprudence of this State. Twenty-six foreign governments have abandoned the principles of liability which Iowa has thus far retained, and sixteen of the United States have recently enacted laws looking to the same end.

Two facts make necessary a change in the present indemnity system: the appalling number of casualties that inevitably occur in modern industries, and the small proportion of the victims who are indemnified under existing laws.

Competent authorities estimate that work accidents in the United States annually cause more than thirty-five thousand deaths and about two million injuries, whereof probably half a million produce disability lasting more than one week. The annual casualty list of peaceful industry, in this country alone, equals the average yearly casualties of the American Civil War, plus

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all those of the Philippine War, plus all those of the Russo-Japanese War. The Titanic disaster appalled the civilized world and compelled governmental action in two hemispheres; and yet as many men are killed every fortnight in the ordinary course of work — although few of the American Commonwealths so much as record their deaths.

The saddest feature of this fearful carnage of peace is its unavoidable continuance. Preventive measures, such as have been adopted in Europe, may reduce the number of work accidents and a rational indemnity system may mitigate the suffering thereby entailed. Yet, when every possible precaution has been taken, industry will continue to exact a frightful toll of life and limb. Even in Germany, which leads the world in accident prevention, 662,321 work injuries were reported in 1911, whereof 9,687 terminated fatally and 142,965 caused disability for more than thirteen weeks. The ugly fact is that work accidents, in the main, are due to causes inherent in mechanical industry, on the one hand, and in the hereditary traits of human nature, on the other hand.

Man has but lately tamed the more subtle and resistless forces of nature — forces whose powers of destruction when they escape control are fully commensurate with their beneficent potency when kept in command. These forces — steam, electricity, compressed air, water under pressure, and high explosives — operate, not the manual tools of other days, but a maze of complicated machinery which the individual workman can neither comprehend nor control, but to the movements of which his own motions must closely conform in rate, range, and direction.

Nor is the worker's danger confined to the task in

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which he is himself engaged or to the appliances within his vision. The modern mill, mine, or railway combines a multitude of separate operations into one comprehensive mechanical process — insomuch that a hidden defect of even a minor part or a momentary lapse of memory or of attention by a single individual may imperil the lives of hundreds. A tower man misinterprets an order or a brittle rail gives way, and a train loaded with human freight dashes to destruction. A miner tamps his shot with slack, and a dust explosion wipes out a score of lives. A steel beam yields to a pressure that it was calculated to bear, in consequence of which a rising sky-scraper collapses, and a small army of workmen are buried in the ruins.

Human nature, inherited from generations that knew not the machine, is but imperfectly fitted to meet the perils thus arising. The common man is neither an automaton nor an animated slide-rule. He does not readily think in terms of mechanical causation, and he often becomes confused in the face of a mechanical exigency which requires instantaneous action. His natural rhythm is both less rapid and less regular than that of the machines he operates, so that he sometimes fails to remove his hand before the die descends or allows himself to be struck by the recoiling lever. It requires an appreciable time for the red light or the warning gong to penetrate his consciousness, and so his response is apt to be tardy or in the wrong direction.

Moreover, this maladjustment of the man and the machine is aggravated by the continued influx of women, children, and untrained peasants into mechanical employments. A very great proportion of the operatives in every large-scale industry are unskilled. Careless-

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ness, as a cause of accidents, is often but another name for youth or inexperience.

Even those accidents which statisticians commonly attribute to the fault of the injured are, in great part, properly chargeable to the inherent hazards of industry. If actual men and women could attain the common law standard of ordinary care, if human behavior were as invariable as that of inanimate objects, if forgetfulness were impossible and fatigue unknown, accidents would be reduced by at least two-fifths. Taking men and women as they are, however, a certain percentage of error is normal to human nature, and accidents from this cause are as inevitable as any other. Of a million letters posted in a given community a certain number will be wrongly addressed and a certain number left unstamped. Of a thousand men who mount to dizzy heights in erecting steel structures a certain number will fall to death; and of a thousand girls who feed metal strips into presses a certain number will have their fingers crushed. The proportions vary little from year to year: given sufficiently large numbers under stable conditions, they can be calculated with an approximation to mathematical accuracy.

Wherefore it comes about that every employment has a predictable hazard, rising in particular occupations like those of the railway switchmen or the structural iron-workers to the casualty rate of an active army in war time. Every machine-made product may be said to have a definite cost in human blood and tears — a life for so many tons of coal, a lacerated hand for so many laundered shirts.

This "blood tax" of industry can be neither shared nor shifted. No compensation can be made for the tor-

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ture of scorched flesh or mangled bodies, for the anguish of widows and orphans, or for the perpetual ghastly consciousness of missing limbs. These things, and the whole hideous host of things like them which follow upon industrial injuries, are a part of the sacrifice which those who toil must make for the benefit of those who enjoy their products. But the heavy pecuniary cost of work accidents — the expense of burying the dead and caring for the wounded and the wages lost through the death or disability of wage-workers — may be distributed in any manner that the community may deem just and expedient. It may be imposed upon the individual sufferers and their dependents, it may be distributed over industrial workers as a class by means of compulsory accident insurance or over society at large through a system of pensions, or it may be taxed to the consumers of those goods in the production of which the injuries were sustained.

The consequences of imposing this pecuniary burden upon the injured workmen and their families are such as no civilized community can afford to tolerate. Work accidents, in the nature of the case, are principally sustained by wage-earners who are substantially propertyless, who have no savings to speak of, and whose incomes are too small to leave any adequate margin for accident insurance. One-half of the adult male wage-workers of the United States receive less than $500 annually and only ten per cent are in receipt of more than $800 per year. Of women wage-workers, three-fifths get less than $325, and only one in twenty gets more than $600 yearly.

One is not surprised to learn that out of 132 married men killed in Pittsburgh only six were insured in substantial amount, and that only 25 out of 214 left savings,

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insurance, and trade union and fraternal benefits to the amount of $500 each. In New York State 175 workingmen who suffered fatal or permanently disabling accidents were insured in the average sum of $106.49. The average value of 13,448,124 "industrial insurance" policies in force in 1902 was $135 — a mere funeral benefit. The unvarnished fact is that the wage-worker neither does nor can provide for the contingencies of sickness, accident, and premature death.

Were disabling injuries sustained only by unmarried and unincumbered workers, matters would go hardly enough with such sufferers as receive no indemnity. But careful investigation in seven different States has conclusively shown that quite half the victims of work accidents are married men, and that a majority of even the unmarried contribute to the support of relatives. A serious work accident, therefore, commonly deprives a necessitous family of its sole or chief source of income. The inevitable result, in the absence of systematic indemnity, is poverty and the long train of evils that flow from poverty.

It is not only that the victims of unindemnified work accidents suffer prolonged incapacity and often needless death from want of means to secure proper care; not only that families are compelled to reduce a standard of living already low, and that women and children are forced into employments unsuited to their age and sex, with resultant physical and moral deterioration; but it is that the ever-present fear of undeserved want goes far to impair that spirit of hopefulness and enterprise upon which industrial efficiency so largely depends.

Lest anyone suppose that such evils do not obtain in agricultural Iowa, let it be recalled that the railways and

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mines of this State took the lives of 1144 workmen and inflicted 14,863 injuries upon employees during the decade from 1901 to 1911. If the factory and building accidents reported to the Bureau of Labor Statistics since 1906 may be taken as a guide, such accidents must have caused an additional 100 deaths and at least 12,000 injuries during the ten year period. Taking the returns at their face value, not far from 125 deaths and 3000 injuries annually occur in the capitalistic industries of Iowa. But the returns of the Bureau of Labor Statistics are notoriously incomplete. More than 5000 injuries causing disability for more than one week were reported to the Industrial Commission of Wisconsin during the twelve months ending on June 30, 1912. During the first eight months of the current year, 6985 work accidents were reported to the Industrial Insurance Commission of the State of Washington. The number of men engaged in hazardous employments in Iowa is about the same as in Washington and not much less than in Wisconsin. It would be well within the mark to say that 5000 disabling injuries are sustained each year by the industrial wage-workers of this State.

The people of Iowa, therefore, like every other industrial community, must fairly face the problem of work accident indemnity. How they have dealt with this problem hitherto, and with what results, will be briefly set forth in the following chapter.

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II

THE EXISTING INDEMNITY SYSTEM

THE common law of employers' liability, which forms the basis of work accident indemnity in Iowa, took shape some seventy-five years ago when machine industry was yet in its infancy; when the small shop where the master worked in the midst of his men still was, or very recently had been, the typical manufacturing establishment; and when work accidents were relatively few and could generally be attributed to some one's negligence. Capitalism was just coming into dominance. Wage-workers had no effective voice in government; while judges and legislators alike were drawn exclusively from the propertied and business classes.

Under such social and economic conditions the common law received a highly individualistic tone. The protection of private property became the chief function of the State. The teaching of Adam Smith, that the unrestrained pursuit of individual self-interest will necessarily promote the general welfare, and of Thomas Jefferson, that that is the best government which governs least, were deemed irrefutable if not actually inspired. Superior wealth and social position were looked upon as "natural" advantages which the State had no right to neutralize. Given only freedom of contract, equality before the law, and protection from violence and fraud, it was believed that every man might safely be left to fend for himself.

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Such were the views which gave rise to the theory that the wage-worker stands on equal terms with his employer, that he is able to choose the conditions under which he will consent to serve, may decline any employment which he deems unduly hazardous and can exact extra pay for extra risk. The employee, it was held, "impliedly agrees" to work in the place and with the appliances and the co-employees and under the conditions provided by his master. He was bound to know, and to take upon himself, all the dangers and exposure to injury that were open to his observation, whether existing at the time of his employment or subsequently arising; and for such risks his wages were supposed to be his full compensation.

Three generations have passed away since these views commanded the general assent of bench and bar. Within that space of time the machine industry has wrought a revolution in the economic life of civilized mankind, greater in many respects than the changes of the preceding three thousand years. The new mode of industrial life has brought in its train new conceptions of social responsibility and of the scope and ends of government. But the common law doctrines of employers' liability live on even after being condemned by the very classes in whose supposed interest they were devised.

Employers' liability is but a branch of the law of negligence. Its cardinal principle is personal responsibility for personal wrong. Some one must be to blame for any untoward occurrence which is not the act of God. The law attempts to fix the blame and to fasten the liability upon the person at fault. If no one was at fault, if the injury could not have been prevented by the exercise of ordinary care, there is no remedy.

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This fundamental principle has been elaborated into a highly complex body of legal doctrines with many ramifications and a multitude of subtle distinctions; but the gist of the law may be reduced to five propositions, convenient rubrics for which are: (1) duties of the master, (2) occupational risks, (3) the fellow-servant rule, (4) contributory negligence, and (5) assumption of risk.

DUTIES OF THE MASTER

An employer is bound to use ordinary care for the safety of those in his employ, to provide a reasonably safe place to work, reasonably safe tools and appliances and a sufficient number of reasonably competent and careful workmen to conduct his business in a reasonably safe manner, to instruct inexperienced servants in the performance of hazardous duties, and to warn his employees of dangers which are not readily discoverable by them, but which are, or ought to be, known to the employer. Any breach of this duty to exercise reasonable or ordinary care is negligence; and for an injury proximately, or directly, caused thereby the employer is liable.

OCCUPATIONAL RISKS

When the master has exercised reasonable care for the safety of his servants, his duties, and consequently his liabilities as well, are at an end. The inherent hazards of industry, which cause fully one-half of all work injuries, fall exclusively upon the employee. Despite every ordinary precaution on the part of all concerned, slate and coal fall from the roofs of mines, dynamite prematurely explodes, cables part, steam pipes burst, molten metal splashes upon those who are handling it, and

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brakemen are thrown from the tops of moving cars. Such accidents are no one's fault, and for injuries sustained thereby the laws afford no remedy.

THE FELLOW-SERVANT RULE

Among the ordinary hazards of industry for which the master is not liable are included those arising from the negligence of co-employees or fellow-servants. The master is bound, indeed, to exercise reasonable care in the selection of employees and to discharge such as have shown themselves to be reckless or incompetent, but he is not answerable to one workman for the negligent acts or omissions of another who is engaged in the same common employment. In Iowa, however, as well as in most other jurisdictions, an employer can not so delegate certain masterial duties as to escape responsibility for their non-performance. This qualification is not without importance, but it leaves a multitude of injuries within the rule to which it is an exception.

The doctrine of co-employment might have had some slight justification if restricted to the fellow-craftsmen of a petty shop who might be supposed to know each other intimately and to be able to guard against each other's negligence. But with exquisite irony the doctrine was applied to railway corporations with their tens of thousands of employees scattered over the face of the continent. "Workingmen who had never heard of one another, nor had the faintest relation with one another, were held to be in common employment; and if one was injured by the negligence of the other there was no title to compensation." In Iowa, a track inspector and a locomotive engineer, a railway detective and the members of a train crew, a coal miner and the men who laid the mine track, have been held to be co-servants.

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CONTRIBUTORY NEGLIGENCE

Even though an employer may have been direlict in his duty and such direliction may have been a concurrent cause of an injury, there is no compensation if the injured person, by his own negligence, contributed in any degree to produce the accident. So strictly is this rule enforced that a moment's forgetfulness of a known danger, or the least imprudence — induced, it may be, by the employer's demand for speed — will suffice to defeat recovery. It matters not that the employee's fault may have been slight and that of the master gross by comparison: if the injured workman, by the use of due care, could have avoided the accident, he can not recover.

ASSUMPTION OF RISK

Lastly, though the workman be blameless and his employer blameable the latter is relieved of all liability if only the former was, or might have been, aware of the dangerous condition which produced his injury. For, by a super-refinement of juristic ingenuity it is reasoned that, by continuing at work with knowledge of his master's negligence, the employee "consented" to the negligence, "assumed" the risk, and "waived" his right to recover. It was his privilege to demand that the defect be repaired and to quit his job when compliance was refused.

At common law, then, the workman who seeks to recover for an injury sustained in the course of his employment must prove, by a preponderance of evidence, that his injury was directly and immediately caused by his employer's neglect of some masterial duty and he himself was free from any contributory negligence in the premises. Despite such proof, the employer may escape

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liability by showing that his negligence was so habitual and notorious that the injured workman must have known of it.

In Iowa these common law rules have, in certain respects, been modified by statute. The doctrines of co-employment and assumption of risk do not apply to injuries arising out of the use and operation of railways; nor is contributory negligence a bar to recovery for such injuries, though it may be considered in mitigation of damages. In other employments the fellow-servant and contributory negligence rules of the common law remain in full force; but assumption of risk applies only to defects which it was the employee's duty to repair and to dangers so "imminent and to such extent that a reasonably prudent person would not have continued in the prosecution of the work."

RESULTS OF THE EXISTING SYSTEM

The net result of the foregoing rules, even as modified in Iowa, is to place the pecuniary burden of industrial injuries almost wholly upon the hapless victims and their families. About two-fifths of all work accidents fall within the rule of contributory negligence which relieves the employer of liability and more than that proportion are caused by those ordinary risks of the industry which are perforce assumed by the employee. At a liberal estimate, employers' liability in Iowa covers not more than one-sixth of the injuries sustained in non-transportation industries.

Investigation in a half-dozen widely separated States indicates that the number of serious injuries actually indemnified is rather less than the proportion for which the employer is legally responsible. Substantial

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indemnity was paid to the dependents of married men killed on the job in 48 cases out of 258 in Allegheny County, Pennsylvania, in 8 cases out of 115 in Erie County, New York, and in one-ninth of the cases investigated in Minnesota. In Wisconsin the Labor Bureau found that only one man out of four recovered any part of the wages lost through disability. Nine of the largest liability insurance companies operating throughout the country, in three years' time, settled 414,681 claims, paying compensation in 52,427 cases, or 12.64 per cent of the whole number.

The compensations allowed are wholly inadequate to offset the financial losses incurred by work accidents. An average of investigated cases shows that in the Pittsburgh District, $254 is paid for the death of a bread-winner, $56.64 for the loss of an eye, $33.33 for an arm, and $7.14 for a finger. The average indemnity paid, in reported cases, for the death of a workman with dependents was $536 in Minnesota and $388.53 in Michigan. In New York the injured workmen and their dependents bear eighty-three per cent of the financial cost of fatal injuries, ninety per cent of the cost of permanent disability, and seventy-one per cent of the losses from temporary incapacity. Hence when a skilled craftsman is killed or incapacitated in the course of duty, the children are taken out of school, the family removes to less comfortable quarters in a more undesirable neighborhood, the mother takes boarders or goes out to work, the boys sink to the rank of the unskilled, and the girls marry beneath the economic class in which they were born. When a similar calamity befalls a common laborer, the widow and the older children eke out such scanty earnings as they can at casual work or in the sweated

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trades: if the family are numerous or the children young, the pitiful struggle often ends in dependence or crime.

Relief is given, when at all, only after delays that often make the final recovery little better than none. In Ohio it requires two years to reach final judgment in a fatal accident case. In Cook County, Illinois, of 42 suits begun in 1908 only two had been decided by October, 1910. In New York State the waiting period varies from six months to six years. In an Iowa case it required six years' time, four juries, and four appeals to the Supreme Court to determine a carpenter's right to indemnity. The claim of a railway brakeman for injuries sustained in Appanoose County, Iowa, though diligently prosecuted through successive courts, only reached the stage of jury trial twelve years after the accident occurred.

The cost to employers is out of all proportion to the benefits conferred on the injured and their dependents. Of $23,523,000 paid to liability insurance companies, $6,600,000, or $28 out of every $100, finally reached the beneficiaries. The employers of Iowa during the ten years 1902–1911, inclusive, paid for liability insurance $1,592,770, whereof $814,037 was expended in settlement of claims. Assuming that one-fourth of the last mentioned sum went to contingent-fee lawyers, not more than forty per cent of the total could have reached the victims of work accidents. Employers' premiums in this State are now close to $300,000 annually, whereof probably two-thirds represents sheer waste.

To inadequacy, waste, and delay is to be added the ill-will engendered between employers and their workmen by litigation and by feelings of injustice on the one side and of resentment on the other. The employer is prone to stand upon his legal rights, or at least to regard

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any relief beyond what the law requires as in the nature of charity. The worker is apt to believe that he has an equitable, if not a legal claim to indemnity, and his fellows are likely to sympathize with this attitude. The friction thus begotten is greatly aggravated by the unscrupulousness of claim adjusters, the pernicious activity of claim agents, the excessive verdicts which juries sometimes award, and the unfounded suits that are brought in the hope of drawing a prize from the judicial lottery. The resulting antagonism is, to employers at least, one of the most deplorable results of the present unhappy system.

Lastly, and most serious of all, the existing liability law does little to encourage accident prevention. It is highly significant that such safety devices as automatic couplers, air-brakes, guards on machinery, belt shifters, fire escapes, safety cages, emergency exits from mines, and countless others, have been adopted but tardily and only in consequence of penal legislation — not from the pressure of accident liability. Yet more convincing evidence to the same effect is afforded by accident statistics. American industries kill and cripple two or three times as many workmen, relatively to the number employed, as do the like industries of Europe under indemnity systems which make accident prevention a business proposition. The fatal accident rate, per 10,000 men employed, is 31 in the coal mines of the United States as against 13 in those of Great Britain and 25 on American railways as compared with 10 on the German lines.

Judged by its fruits, therefore, the common law of employers' liability must be condemned. In the language of former President Roosevelt, "it is neither just, expedient nor humane". Since work accidents are in-

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evitable concomitants of that mechanical industry which has made modern civilization possible, and the products of which are enjoyed in fullest measure by the classes least exposed to its hazards; since the victims of these injuries are precisely those least able, out of their own meagre incomes, to provide against death or disability; since the evils of poverty affect not alone the families immediately concerned, but the State as well; an enlightened public policy demands that those who are crippled in the production of the community's wealth, and the dependents of those who are slain, shall be indemnified by those for whom they wrought.

Accordingly, the principle of negligence as a basis of indemnifying work accidents has been discarded as barbarous and out of date by every civilized nation except our own.

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III

ACCIDENT INDEMNITY ABROAD

ALMOST everywhere outside the United States indemnity for work accidents is based on the theory of occupational risks. Concisely stated, this theory runs:— The consumers of economic goods should bear all the money costs incurred in the production of them. Among these costs are to be reckoned the pecuniary losses from deaths and injuries occurring in the regular course of production — the expenses of burial for the dead and of medical attendance for the injured and the wages lost to workmen and their dependents through the death or disability of bread-winners. Wage-earners, if forced to bear these losses in the first instance are unable to recoup themselves by means of compensatory wages or otherwise. The pecuniary cost of work accidents ought, therefore, to be treated like other costs of production under the entrepreneur system — borne by the employers in the first instance and by them shifted in the form of enhanced price upon the consumers of those goods in the production of which the injuries were sustained.

There are two general methods of giving effect to the principle of occupational risks, commonly known, respectively, as "workmen's compensation" and "industrial insurance". Under the former plan, each employer is required to compensate injuries sustained in his employment, though he is permitted (and in some countries is required) to insure his liability. The second mode makes

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the employers of each industrial group collectively responsible for the injuries sustained in that group. Both systems secure prompt and certain indemnity, based upon the earnings of the injured, for all injuries by accident arising out of and in the course of the employment, and provide for the non-litigious determination of claims.

The compensation system exists in Belgium, Denmark, Finland, France, Great Britain, Greece, Italy, the Netherlands, Russia, Spain, Sweden, and most of the self-governing British colonies. The British law is the best known and has, indeed, served as a model in most of the other countries mentioned.

WORKMEN'S COMPENSATION IN GREAT BRITAIN

The British Workmen's Compensation Act of 1906 applies to all employments and to all employees, except non-manual workers whose wages exceed 250 pounds per annum and persons casually employed otherwise than in the course of trade or business, and it covers all injuries "which cause death or disable the workman for one week". The sole defense to a claim for compensation under the act is that the injury was caused by the "serious and wilful misconduct" of the injured person, and even this defense is available only in cases of temporary disability. Contracting out is prohibited unless the employer provides a scheme of compensation not less favorable to the workman than the act itself.

The schedule of compensation provided by the English law is: (1) in cases of death, where there are no dependents, reasonable medical and funeral expenses; (2) in cases of death, where there are persons wholly dependent on the deceased, three years' wages, but not less than 150 pounds nor more than 300 pounds; (3) in

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cases of death where there are none but partial dependents, payments proportional to such dependency; (4) in cases of total disability, one-half of weekly wages during disability; (5) in cases of partial disability, one-half of the loss of earning capacity. No compensation is paid for disability lasting less than one week, nor for the first week where incapacity does not last more than two weeks.

Disputes under the act may be adjudicated: (1) by an arbitration committee representing the employer and his employees, (2) by an arbitrator agreed on by the parties, (3) by a county judge, or (4) by an arbitrator appointed by him. Findings of fact, whether by an arbitrator or by a county judge, are final. On questions of law, appeals lie to the Court of Appeals and ultimately to the House of Lords. In practice, nearly all claims are settled by agreement, only one-fifth of the death claims and one-half of one per cent of the disability claims being taken into court. The number of appeals to higher courts is likewise small. In 1908 it appears that 328,957 injuries were compensated, 5358 disputes were referred to county courts, 112 cases were carried to the Court of Appeals, and only 3 cases reached the House of Lords. A peculiar feature of the British system is the survival of the earlier employers' liability act alongside of the compensation law so that recovery may be had under either act, though not under both.

ACCIDENT INSURANCE IN GERMANY

The German plan differs from the British in substituting compulsory mutual insurance for individual liability of employers and in requiring contributions from the workmen. The benefits provided are: (1) medical and surgical treatment and medicines and therapeutic

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appliances in all cases and hospital care where needed; (2) a monthly pension to injured workmen continuing during disability and equal in cases of total disability to two-thirds of the workmen's wages and a proportionate payment for partial incapacity; (3) a burial allowance in all cases of death; and (4) a pension to the surviving dependents of a workman who is killed, not exceeding one-fifth of the average earnings of the deceased to any one dependent or three-fifths thereof to all dependents.

To provide these benefits employers are organized industry-wise in mutual accident insurance associations, membership in which is compulsory. There are sixty-six such associations for industrial and forty-eight for agricultural establishments, so constituted that each is thoroughly homogeneous in character. Most of the associations cover the whole Empire; only those for agriculture, iron and steel, other metals, textiles, woodworking, and the building trades are divided territorially. The associations are managed by the members under rigid supervision by the Imperial Insurance Office and by similar administrative agencies in certain States.

Funds are raised by assessments determined by comparing, for the whole industry and for each distinct branch, the actual expenditure on account of accidents with the aggregate pay roll for a period of years and taking the average ratio, increased by a small percentage for reserves, as the basis for the levy of the current year. The contribution of each employer depends, of course, upon his average pay roll together with his rating in the risk tariff thus constructed. A rating higher than the normal may be imposed upon any establishment for failure to comply with the accident prevention regulations prescribed by the association.

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Minor injuries, causing disability for less than thirteen weeks, are cared for by the sick insurance funds, whereof employers contribute one-third and the insured workmen two-thirds, and which are jointly managed by employers and employees. It is estimated that the workers thus contribute some eight per cent of the whole cost of accident indemnity.

Claims for accident indemnity are passed upon, in the first instance, by the executive committee of the local section of the association affected. Disputes are referred to an arbitration court, composed of an equal number of employers and insured persons with a government official as umpire. Appeals lie from this court to the Imperial Insurance Office. In practice, about eighteen out of every hundred claims are taken to the arbitration courts, and about one-sixth of the decisions rendered by these courts (or three per cent of all claims arising) are appealed to the Imperial Insurance Office.

The insurance systems of Austria, Hungary, Luxemburg, and Switzerland are similar in principle to that of Germany. But Hungary, Luxemburg, and Switzerland, most of whose industries are too small for autonomous insurance, have each created a single mutual association for the whole country. In Hungary, sick and accident insurance are conducted by the same association under the joint management of employers and employees; while in Switzerland there is a National Insurance Institute, the governing body of which is appointed by the Federal Council upon the nomination of trade societies.

THE NORWAY PLAN

The German plan was deemed impracticable in Norway because of the small numbers of workmen in most

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of the industrial groups. A system of compulsory state insurance was accordingly adopted, the National Insurance Institution combining the functions which in Germany are performed by the Imperial Insurance Office and the employers' mutual associations. The Norwegian system is, in most other respects, similar to the German plan.

COMPARISON OF THE EUROPEAN SYSTEMS

Most students of the subject are agreed that compulsory mutual or State insurance is far superior to the simple compensation plan. The chief advantages of the insurance system are: security of payment, uniform distribution of the burden, economy of operation, and effectiveness for accident prevention.

Where insurance is obligatory, the ultimate payment of all accident indemnities is assured; whereas, in Great Britain, the insolvency of an uninsured employer leaves his pensioners remediless.

Under the system of compulsory insurance the cost of accident indemnity is distributed over the whole industry and made a fixed charge upon the business, as regular and as calculable as any other operating expense. In Great Britain, where some employers do and others do not insure their liability, there is no such uniform distribution, and consequently no such complete shifting of the burden.

Both the German and the Norwegian plans are far more economical than the British. In England under the Workmen's Compensation Act, as under the common law, private liability insurance flourishes, with resultant waste hardly less than in the United States. Of every dollar paid in premiums to the British liability com-

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panies, only fifty cents reaches the beneficiaries; whereas of each dollar collected by the German mutual associations nearly eighty-seven cents is ultimately paid to injured workmen or their dependents. Administrative costs in Norway are equally low.

The German system is superior to both its rivals in the vital matter of accident prevention. The method of risk tariffs, already explained, penalizes the indifferent and rewards the careful employer. The employers' associations have a strong incentive to keep down assessments by reducing the number of accidents and they are in a position to devise and enforce effective measures to that end. The workingmen's sick insurance societies, also, have both the motive and the ability to coöperate in promoting safety. Private insurance companies have no such facilities as are at the disposal of homogeneous employers' associations for the experimental study of accident prevention; and, what is even more important, they are deterred by the keen competition for business from exerting adequate pressure upon their patrons. In Norway accident insurance and factory inspection are administered by separate departments of the government which has greatly hampered the work of accident prevention.

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IV

RECENT INDEMNITY LEGISLATION IN THE UNITED STATES

As already intimated, the United States has been very backward both in the prevention and in the relief of work accidents. So late as 1909 the common law, with only minor modifications, obtained throughout the country, as it even now obtains in a majority of the States. No State has yet provided an indemnity system comparable in scope or efficiency with that of the least progressive European nations. Even the elementary task of gathering adequate and trustworthy statistics upon which to base legislation is attempted only by Massachusetts, Washington, and Wisconsin.

Within four years, however, the legislatures of sixteen Commonwealths have enacted laws more or less modeled upon those of Europe, and similar legislation is now pending in fourteen States. The new movement is not confined to any one section. Commissions have been appointed or laws enacted from Maine to California and from North Dakota to Texas. There is good ground to believe, therefore, that a State which holds fast to the common law will shortly find itself out of line with the nation at large.

Of the recent indemnity laws those of Montana and New York have been declared invalid by the courts, and for that reason will not be considered in the following summary. New York and Maryland have purely optional

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acts, which may likewise be disregarded as of no practical consequence. Of the remaining thirteen statutes, ten provide for compensation after the British plan, two establish State insurance, and one creates an employers' mutual insurance association under State supervision. The leading features of all the acts are shown in the accompanying table.

BASIS OF RECOVERY

As to injuries within their scope all of the acts under review give compensation irrespective of fault. But ten States make gross and wilful misconduct or deliberate intention to produce the injury, on the part of the injured person, a bar to recovery, and six grant additional compensation or additional rights of action for the violation of safety laws by the employer.

EMPLOYMENTS COVERED

The laws of Arizona, Illinois, Kansas, Nevada, New Hampshire, and Washington are limited to specified employments declared in the acts themselves to be especially hazardous. The Massachusetts, Michigan, and Rhode Island acts exclude agriculture and domestic service; the acts of Rhode Island and Wisconsin exempt employers of fewer than five persons; while those of California and New Jersey apply to all employers. Employees of the State and its minor divisions are included in California, Michigan, and Wisconsin, and in Washington if engaged in extra-hazardous work. In several States the principal is answerable to the employees of a sub-contractor. Most of the statutes expressly exclude casual workers employed otherwise than in the regular course of business.

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TABLE I

Indemnity Legislation in the United States

State	Year of Act	Character of Plan	Scope of Act		
			Employments Covered	Injuries Covered	Employees Included
Arizona	1912	Compulsory compensation	Specified dangerous employments	All arising out of and in course of employment	All in specified dangerous employments
California	1911	Elective compensation. Compulsory on State and its subdivisions	All	All growing out of employment	All except casual
Illinois	1911	Elective compensation	Specified dangerous employments employing at least 15 workmen	All arising out of and in course of employment	All exposed to necessary hazards of business, casual excepted
Kansas	1911	Elective compensation	Specified dangerous employments	All arising out of and in course of employment	All regularly engaged in the business
Maryland	1912	Elective insurance	All	All arising out of and in course of employment	All employees
Massachusetts	1911	Elective insurance	All except domestic servants and farm laborers	All arising out of and in course of employment	All except casual employees
Michigan	1912	Elective. Compulsory for State and its subdivisions. Compensation or insurance	All except domestic servants and farm laborers	All arising out of and in course of employment	All but casual employees
Montana	1909	Compulsory insurance	All in coal mines and washers	All in course of employment from causes arising therein	All except office employees
Nevada	1911	Compulsory for employer. Elective for employee. Compensation	Specified dangerous employments	All arising out of and in course of employment	All engaged in manual or mechanical labor
New Hampshire	1911	Elective compensation	Specified dangerous employments	All arising out of and in course of employment	All engaged in manual or mechanical labor
New Jersey	1911	Elective compensation	All	All arising out of and in course of employment	All
New York	1910	Compensation. Compulsory on employer, elective for employee	Specified dangerous employments	All arising out of and in course of employment	All manual and mechanical laborers in specified employments
Ohio	1911	Elective for employer. Compulsory for employee if employer elects Coöperative insurance	All establishments employing 5 or more workmen	All sustained in course of employment	All
Rhode Island	1912	Elective compensation	All but domestic service or agriculture and employers of less than 6 workmen	All arising out of and in course of employment	All but casual and those earning over $1800 annually
Washington	1911	Compulsory insurance	Specified dangerous employments	All sustained in course of employment	All in listed employments, & others when employer and workmen elect under law
Wisconsin	1911	Elective. Compensation. Compulsory on State and municipalities	All	All growing out of employment	All except casual

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TABLE I — CONTINUED

STATE	ELECTION		DEFENSES ABROGATED	LIABILITIES ABROGATED
	BY EMPLOYER	BY EMPLOYEE		
Arizona	Compulsory	Election after injury	Common law defenses abrogated	Acceptance of compensation excludes other liabilities
California	Affirmative by written notice. Compulsory on public bodies	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant. Contributory negligence becomes comparative	Election under act cancels all other liabilities of employer
Illinois	Presumed unless notice to contrary	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant, contributory negligence becomes comparative	Election under act cancels all other liabilities of employer
Kansas	Affirmative by statement	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant, contributory negligence	Election under act cancels all other liabilities of employer
Maryland	By contract with employees filed with Insurance Commissioner	By contract with employer	Contract must provide for liability regardless of negligence	Contract abrogates all other liabilities
Massachusetts	Affirmative by written notice	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant. Contributory negligence subject for jury	Election under act cancels all other liabilities of employer
Michigan	Affirmative by written notice	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant rule, contributory negligence	Election under act excludes all other liabilities
Montana	Compulsory	Contribution compulsory, damage suit optional after injury	No provision	Acceptance of benefit releases employer from all other liabilities
Nevada	Compulsory	Election after injury	Assumption of risk and fellow servant rule abolished. Contributory negligence graded comparatively	Acceptance of compensation excludes other liabilities
New Hampshire	Affirmative by notice	Election after injury	If employer does not elect under act: assumption of risk, fellow servant	Acceptance of compensation excludes other liabilities
New Jersey	Presumed unless notice to contrary	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant rule, contributory negligence	Election cancels all other liabilities of employer
New York	Compulsory	Election after injury	Not mentioned	Application for benefit under act releases employer from all other liabilities
Ohio	Affirmative by paying premiums	Compulsory if employer elects	Assumption of risk, fellow servant rule, and contributory negligence abolished	Election under act cancels all other liabilities of employer
Rhode Island	Affirmative by written notice	Presumed unless notice to contrary	If employer does not elect under act: assumption of risk, fellow servant rule, contributory negligence	Election under act cancels all other liabilities of employer
Washington	Compulsory	Compulsory	If employer default in premium payments, workmen may maintain action at law, and assumption of risk and fellow servant rule are abrogated. Contributory negligence made comparative	State insurance benefits exclude all others
Wisconsin	Affirmative by notice	Presumed unless notice to contrary. Compulsory on public employees	If employer does not elect under act: assumption of risk, fellow servant	Election under act cancels all other liabilities of employer

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TABLE I — CONTINUED

STATE	GROSS NEGLIGENCE OR WILFUL MISCONDUCT		FUNDS PROVIDED BY	EMPLOYER'S VOLUNTARY RELIEF	ADMINISTRATION
	OF EMPLOYER	OF EMPLOYEE			
Arizona	No provision	No provision	Employer	Valid if not less favorable to employee than act	Attorney General
California	Gives employee option of damage suit	Forfeits compensation	Employer	Valid but benefits are in addition to those under act	Industrial Accident Board
Illinois	Gives employee option of damage suit	Forfeits compensation	Employer	Valid if not less favorable to employee than act	
Kansas	Gives employee option of damage suit	Forfeits compensation	Employer	Valid if as much as benefit covered by employee's contribution plus benefit under act	
Maryland		Forfeits compensation	Employer, one half. Employees, one half		Employers insurance fund by Insurance Commissioner
Massachusetts	Doubles compensation to employee	Forfeits compensation	Employer	No other benefits affect liability under act	Industrial Accident Board
Michigan	Not mentioned	Forfeits compensation under act. Gives contributory negligence defense at law to employer	Employer	No other benefits affect liability under act	Industrial Accident Board
Montana	Not mentioned	No provision	From employer, 1c per ton mined from employee 1% of wages	Not mentioned	State Auditor
Nevada	No provision	No provision	Employer	Not mentioned	
New Hampshire	Gives employee option of damage suit	Forfeits compensation	Employer	Not mentioned	
New Jersey	No provision	Forfeits compensation	Employer	Not mentioned	Court of Common Pleas
New York	No provision	Forfeits compensation	Employer	Not mentioned	
Ohio	Gives employee option of damage suit	Forfeits compensation	From employer 90%, from employees 10% of premium	Not mentioned	State Liability Board of Awards
Rhode Island	No provision	Forfeits compensation	Employer	Must be as favorable to employee as act, and approved by Superior Court	Superior Court
Washington	Gives compensation under act and right of damage suit for excess of damage	Forfeits compensation	Employer	Not mentioned	Industrial Insurance Department
Wisconsin	No provision	Forfeits compensation	Employer	Valid but compensation under act not reduced by employee's contribution	Commission

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TABLE I — CONTINUED

STATE	MEDICAL AID	TOTAL DISABILITY	
		COMPENSATION	CONTINUANCE
Arizona	No provision	50% full time wages semi-monthly	During incapacity. Limited to $4000
California	Limited to 90 days and $100	65% average weekly wages	Limited to 15 years and 8 years' wages
Illinois	Limited to 8 weeks and $200	50% average weekly wages $5 to $12	Limited to death benefit. Thereafter 8% death benefit yearly
Kansas	No provision	50% average weekly wages $6 to $15	During incapacity. Limited to 10 years
Maryland	No provision	50% weekly wages	During disability
Massachusetts	Limited to first 2 weeks	50% average weekly wages $4 to $10 Total not to exceed $3000	500 weeks
Michigan	Limited to first three weeks	50% average weekly wages $4 to $10 Total not to exceed $4000	500 weeks
Montana	At discretion of State Auditor	$1 for each working day paid monthly	During disability
Nevada	No provision	60% average weekly wages	$3000
New Hampshire	No provision	50% average weekly wages Limited to $10	300 weeks
New Jersey	Limited to first 2 weeks and $100	50% average weekly wages $5 to $10	400 weeks
New York	No provision	50% average weekly wages Limited to $10	8 years
Ohio	At discretion of Board but limited to $200	66 2-3% average weekly wages $5 to $12	During disability
Rhode Island	Limited to 2 weeks	50% average weekly wages $4 to $10	500 weeks
Washington	No provision	Not married $20 per month Married $25 per month Children each $5 per month Total limited to $35 per month	During disability
Wisconsin	Limited to 90 days	65% average weekly wages $4.69 to $9.38 Full wages if more is required	15 years or 4 times average annual wage

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TABLE I — CONTINUED

STATE	PARTIAL DISABILITY		WAITING TIME	SPECIFIED INJURIES
	COMPENSATION	CONTINUANCE		
Arizona	50% wage loss semi-monthly	During disability. Limited to $4000	2 weeks. Compensation from date of accident	No provision
California	65% weekly wage loss	15 years	1 week	No provision
Illinois	50% weekly wage loss	During disability	1 week	For permanent disfigurement. Maximum limit ¼ death benefit
Kansas	25% to 50% weekly wage loss. $3 to $12	During disability. Limited to 10 years	2 weeks	No provision
Maryland	Difference between total disability benefits and earnings after injury	During disability	1 week	Specific fractions of total disability payments
Massachusetts	50% weekly wage loss. Limited to $10	300 weeks	2 weeks	Specified compensation
Michigan	50% weekly wage loss. Limited to $10	300 weeks	2 weeks. Compensation from date of accident if disability continues 8 weeks	Specified compensation
Montana	No provision except for specific injuries		12 weeks	Specified compensation
Nevada	60% wage loss	$3000	10 days	Specified compensation
New Hampshire	50% weekly wage loss. Limited to $10	300 weeks	2 weeks	No provision
New Jersey	Proportionate to disability weekly $5 to $10	300 weeks	2 weeks	Specified compensation
New York	Not to exceed wage loss nor be less than ½ wage loss. Limited to $10	8 years	2 weeks	No provision
Ohio	66 2-3% weekly wage loss. $5 to $12	6 years or $3400	1 week	No provision
Rhode Island	50% weekly wage loss. Limited to $10	300 weeks	2 weeks	Specified compensation
Washington	Monthly sum proportionate to disability	$1500	Not mentioned	Specified compensation
Wisconsin	65% weekly wage loss	15 years or $3000	1 week. Compensation from beginning if injury lasts 4 weeks	No provision

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TABLE I — CONTINUED

STATE	DEATH				
	TOTAL DEPENDENTS	PARTIAL DEPENDENTS	ALIEN DEPENDENTS	MODE OF PAYMENT	NO DEPENDENTS
Arizona	1200 times daily wages. Only to widow and minor children. $4000 limit	Same as to total dependents	Not mentioned	Lump sum	Medical and burial expenses
California	3 years' wages $1000 to $5000	Proportionate to dependency	Not mentioned	Weekly.	Burial expenses. Maximum $100
Illinois	50% wages for 8 years $1500 to $3500	Proportionate to dependency	Not mentioned	Weekly Commutable to lump sum by order of court	Burial expenses. Maximum $150
Kansas	3 years' wages $1200 to $3600	Proportionate to dependency	Non-resident aliens receive sum not to exceed $750	Lump sum	Burial expenses. Maximum $100
Maryland	3 years' wages. Minimum limit $1000	3 yrs.' wages of deceased less 6 yrs.' wages of dependent	Not mentioned	Lump sum or weekly according to contract	Medical and burial expenses $75 to $100
Massachusetts	50% wages for 300 weeks $1200 to $3000	Proportionate to dependency	Not mentioned	Weekly. Commutable to lump sum after 6 months	Burial expenses. Maximum $200
Michigan	50% weekly wages for 300 weeks $4 to $10	Proportionate to dependency	Not mentioned	Weekly	Medical and burial expenses. Maximum $200
Montana	$3000	$3000	Non-resident aliens receive no compensation	Lump sum	
Nevada	3 years' wages $2000 to $3000	Half the compensation to total dependents	Not mentioned	Lump sum	Burial expenses. Maximum $300
New Hampshire	150 weeks' wages. Maximum limit $3000	Proportionate to dependency	No compensation to aliens unless residents of State	Lump sum	Burial expenses. Maximum $100
New Jersey	Widow 25% w'kly wages. Orphans 25 to 60% w'kly wage. Widow and 1 child 40% weekly wage. Each child to 4, 5% extra. 300 weeks. $5-$10 per week	Grand parents, grandchildren, incapacitated or minor brothers or sisters, 25% w'kly wages 300 w'ks	No compensation to aliens not living in United States	Weekly. Commutable to lump sum by order of court	Burial expenses. Maximum $200
New York	1200 times daily wages Maximum limit $3000	Proportionate to dependency	Not mentioned	Lump sum	Medical and burial expenses. Maximum $100
Ohio	66 2-3% 6 years' wages $1500 to $3400 Funeral $150 additional	36 2-3% w'ges for period det'rm'n'd by Board. Funeral $150 addit'nal	Not mentioned	Weekly. Commutable to lump sum by Board	Medical and hospital expenses, limited to $200. Burial $150
Rhode Island	50% weekly wages for 300 weeks $4 to $10	Proportionate to dependency	Not mentioned	Weekly	Last sickness and burial expenses. Maximum $200
Washington	Widow $20 a mo. till remarriage. $240 dower. Children $5 each additional. Orphans $10 a mo. each. Maximum $35 a mo. Funeral $75	50% average monthly support received from deceased	Non-resident aliens except father and mother not considered	Monthly. Substitution of lump sum if beneficiary be or move out of State	Burial expenses. Maximum $75
Wisconsin	Four years' weekly wages $1500 to $3000	Proportionate to dependency	Act gives non-resident aliens same benefits	Weekly. Board may commute to lump sum	Burial expenses. Maximum $100

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ELECTION

The first important indemnity legislation in this country — the New York Workmen's Compensation Act of 1910 — was held to be a denial of "due process of law". Since that decision only three legislatures have ventured to enact compulsory laws. The acts of Arizona, Nevada, and Washington are obligatory upon employers, and that of Washington upon workmen as well.

Ten States sought to evade constitutional difficulties and at the same time give practical effect to their enactments by making them elective in form, while imposing heavy penalties upon all who should elect to retain their common law rights. In these States — California, Illinois, Kansas, Massachusetts, Michigan, New Hampshire, New Jersey, Ohio, Rhode Island, and Wisconsin — employers who fail to bring themselves within the statutes are stripped of their common law defenses; while those who elect under the acts are either saved these defenses or exempted from liability suits. In most of the foregoing States the employer is required to make affirmative election by filing a written statement with the proper administrative authority. In Illinois and New Jersey, however, such election is presumed in the absence of written notice to the contrary. In California, Illinois, Kansas, Massachusetts, Michigan, New Jersey, Rhode Island, and Wisconsin the affirmative election of the employer carries with it that of the employees unless they severally give notice to the contrary; while in Ohio mere continuance in the employment with notice that the employer has accepted the act constitutes a waiver of other rights and remedies. In Arizona, New Hampshire, and Nevada the workman may elect after the injury whether to take

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under the compensation statutes or to sue at common law or under the employers' liability acts.

SCHEDULES OF COMPENSATION

Limited medical aid is provided by nine of the thirteen statutes. Death benefits to persons wholly dependent upon the deceased amount to four years' wages in Arizona, Illinois, Ohio, and Wisconsin, and to three years' wages in most of the other States. The compensation to partial dependents usually is proportionate to dependency. Reasonable funeral expenses for those who leave no dependents are allowed by eleven States and for all who die as the result of work accidents by two. Pensions to the totally disabled range from fifty per cent of wages in New Jersey to sixty-six and two-thirds per cent in Ohio. Washington allows monthly pensions irrespective of wages but varying with the number of dependents. In most of the States compensation to those partially incapacitated is proportionate to the wage loss. A waiting period of one or two weeks, during which no compensation is paid to the injured, usually is exacted. Most of the indemnities are subject to certain maxima and minima and in some States pensions to the incapacitated terminate after a certain number of years.

INSURANCE

No insurance of the employers' liability under the compensation acts is required by Arizona, California, Illinois, Kansas, Nevada, New Jersey, Rhode Island, or Wisconsin. New Hampshire requires the employer to satisfy the Labor Commissioner, by giving bond or otherwise, of his pecuniary responsibility. In Michigan the employer who elects under the act must give to the In-

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dustrial Accident Board satisfactory proof of his financial responsibility, or insure his liability either in an employers' mutual association or a private company, or pay his premiums to the Commissioner of Insurance. Liability under the Massachusetts act must be insured in the Massachusetts Employees' Insurance Association, provided for by the act, or in an approved liability insurance company. Ohio and Washington, lastly, have adopted the Norway plan of State insurance.

BURDEN OF THE ACTS

The burden of the new indemnity systems is placed wholly upon the employer in twelve States. In Ohio the employer is allowed to deduct from the wages of insured workmen ten per cent of the premiums payable by him.

ADMINISTRATION

California, Massachusetts, Michigan, Ohio, Washington, and Wisconsin have established special boards, maintained out of the public treasury and clothed with important supervisory and administrative powers. (See Table II). The other States provide no special administrative machinery. New Jersey, however, has an unpaid permanent commission whose duty it is to observe and report upon the operation of the Compensation Act.

ADJUDICATION OF CLAIMS

All the statutes under review seek to minimize the delay and expense of litigation. In California, Massachusetts, Michigan, and Wisconsin all disputes and in Ohio and Washington all claims are determined, in the first instance, by the administrative boards of these States. Awards so made are subject to court review only on questions of law in Massachusetts; and in Cali-

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TABLE II

ADMINISTRATIVE BOARDS

STATES	TITLE OF BOARD	MEMBERS	APPOINTMENT	TERM	SALARY	FUNCTIONS
California	Industrial Accident Board	3	Governor and Senate	4 yrs.	$3600	Administration of Compensation Act. Determination of claims
Massachusetts	Industrial Accident Board	5	Governor and Council	5 yrs.	Chairman $5000 Others $4500	Supervision of Employees' Insurance Association. Administration of Compensation Act. Determination of disputes. Collection of accident records
Michigan	Industrial Accident Board	3	Governor and Senate	6 yrs.	$3500	Administration of Compensation Act. Determination of disputes. Collection of accident records
Ohio	Liability Board of Awards	3	Governor	6 yrs.	$5000	Administration of Insurance Act
Washington	Industrial Insurance Department	3	Governor	6 yrs.	$5000	Administration of Insurance Act
Wisconsin	Industrial Commission	3	Governor and Senate	6 yrs.	$5000	Administers workmen's compensation act and all labor laws. Collects accident records

fornia, Michigan, Washington, and Wisconsin, only on the ground that the same was obtained by fraud or was without the jurisdiction of the board or was unsupported by the facts found. In Ohio only a finding which wholly denies compensation can be reviewed by the courts. New Hampshire, New Jersey, and Rhode Island provide for the determination of claims, in default of agreement, by a single judge whose findings of fact are final. Arizona and Illinois require and Kansas and Nevada permit the arbitration of claims before resort is had to the courts. Jury trial, as to claims arising under the compensation or insurance acts, is wholly denied in California, Massachusetts, Michigan, New Hampshire, New Jersey, Rhode Island, and Wisconsin, and is somewhat restricted in Illinois, Kansas, and Washington. Nine States limit the fees of claimants' attorneys or make such fees subject to approval by the trial court or the administrative board.

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TABLE III

ADJUDICATION OF CLAIMS

STATES	PRIMARY DETERMINATION OF CLAIMS	COURT REVIEW	JURY TRIAL	FEES OF CLAIMANTS' ATTORNEYS
Arizona	By agreement, arbitration, reference to Attorney General, or action at law	Action at law upon failure of settlement	Allowed in suits at law	Fixed by court. Limited to 25% of award
California	All disputes determined by Industrial Accident Board	Only on grounds of fraud, want of jurisdiction, or insufficiency of facts found to support award	None	No provision
Illinois	By agreement or by Board of Arbitrators with umpire appointed by Court	On appeal from arbitrators. Trial *de novo*	If demanded with notice of appeal	Subject to approval of court
Kansas	By agreement or arbitration. Action at law in default of agreement or arbitration	Action at law in default of agreement or arbitration	If demanded with notice of appeal	Subject to approval of court
Massachusetts	By agreement approved by Board. Disputes determined by arbitrators with member of Board as chairman and reviewable by Board	On questions of law only	None	Subject to approval of Industrial Accident Board
Michigan	By agreement approved by Board. Disputes determined by arbitrators with member of Board as chairman and reviewable by Board	On questions of law only, by Supreme Court	None	Subject to approval of Industrial Accident Board
Nevada	By arbitration or suit at law	Original proceedings or appeal from arbitrators	Allowed	No provision
New Hampshire	By agreement or petition in equity	Original proceeding in equity	None	Subject to approval of court
New Jersey	By agreement or by Court of Common Pleas	Award of Court of Common Pleas reviewable only on questions of law	None	No provision
Ohio	By Liability Board of Awards. Findings final on facts	Original proceeding when compensation is denied on grounds going to basis of claim	If demanded in court trials	Fixed by trial judge
Rhode Island	By agreement approved by Superior Court or by petition in equity	Award of Superior Court reviewable only on questions of law	None	No provision
Washington	All claims determined by Industrial Insurance Department	By appeal on grounds of fraud, want of jurisdiction, or insufficiency of facts found to support award	Of right as to certain matters. In discretion of court as others	Subject to approval of court
Wisconsin	All disputes determined by Industrial Commission. Findings of fact final	Only on grounds of fraud, want of jurisdiction, or insufficiency of facts found to support award	None	Not to exceed 10% of award without Comsion's authorization

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V

STANDARDS OF INDEMNITY LEGISLATION

THE experience of European nations and the researches of many investigators have established certain standards for accident indemnity which may fairly be termed indisputable. The legislator, of course, is bound to consider not merely what is desirable but what is practical and expedient in the present state of constitutional law and of public opinion. Nevertheless, it is highly important that correct principles should be adopted at the outset of any new departure in social legislation. Details can readily be filled out or modified as experience may suggest, but a fundamental change in any system once adopted is not effected without much opposition, loss, and inconvenience. An attempt will accordingly be made to set forth briefly the standards of indemnity legislation upon which students of the subject generally are agreed.

BASIS OF INDEMNITY

There is no question, in the first place, that the law of negligence should be abrogated and the principle of occupational risks adopted in its stead. This principle has been endorsed by both organized labor and organized capital, by the American Federation of Labor and the National Association of Manufacturers, by the Railway Brotherhoods, by the Steel Corporation, and by the International Harvester Company. It forms the basis of

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indemnity in twenty-six foreign countries and in thirteen American Commonwealths, and has been recommended for adoption by the Iowa Employers' Liability Commission and by the similar commissions of about a dozen States and of the Federal government. So generally, indeed, has it been approved by sociologists, jurists, and statesmen that, in the language of the Washington Supreme Court, "to assert to the contrary is to turn the face against the enlightened opinion of mankind."

COMPULSION OR ELECTION

One of the most difficult questions to be decided is how to make the compensation act effective without coming into conflict with judicial interpretation of the State and Federal Constitutions. On the one hand, reason and experience dictate compulsory legislation; on the other hand, there is some danger that such legislation may be invalidated by the courts.

Obviously, a purely permissive law, like that of Maryland or the surviving statute of New York, would be nugatory. Employers can, and some of them do, without express statutory authorization compensate injuries sustained in their employment irrespective of legal liability. Even a quasi-elective plan, such as has been adopted by ten States, is but partially effective. In Wisconsin, where the defense of contributory negligence remains operative for employers who do not elect under the act, only one-fourth of the accidents reported during the first year fell within the compensation law. In California, where the rule of comparative negligence is established as to injuries without the statute, only 36,000 employees had been brought within the act at the end of twelve months. Illinois and New Jersey, which presume affirm-

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ative election in the absence of positive action by the employer, make a more favorable showing. The proportion of workmen excluded from the benefits of the Illinois act can not be determined from extant records, but it appears that the larger coal operators, many of the smaller manufacturers, and a majority of the building contractors have rejected the statute. In New Jersey, where the doctrine of contributory negligence is wholly abrogated and where liability insurance rates are higher at common law than under the act, almost ninety per cent of the accidents reported to the Employers' Liability Commission are within the statute. Comparison with Massachusetts, Washington, and Wisconsin indicates, however, that the New Jersey returns are very incomplete and that the above showing is, consequently, more favorable than the facts would warrant.

It must be concluded, therefore, that the quasi-elective acts, while representing a very great advance over the common law, leave a large proportion of work injuries unindemnified. Unequal justice results, since workmen in like establishments are under different laws. What is still more vital, the quasi-elective laws are but partially effectual for the prevention of accidents. Neither the Massachusetts Association nor the Ohio Liability Board can impose adequate penalties upon employers who fail to adopt rigid safety measures, for such a course would only drive the careless and indifferent out of the compensation scheme. Private liability companies are even less effective for the saving of life and limb because their efforts in this direction are handicapped by competition.

Fully appreciating these disadvantages of the quasi-elective plan a majority of the Employers' Liability

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Commission of Iowa nevertheless felt themselves constrained by constitutional difficulties to recommend its adoption. It would be mere presumption for a layman to oppose his opinion on a constitutional question to that of the eminent lawyers who served on or advised the Iowa Commission. A word may, however, be ventured with respect to the state of the authorities upon the point at issue.

A compulsory compensation act was overthrown by the New York Court of Appeals as being in derogation of "due process of law". But this decision was regarded by fourteen teachers of constitutional law in thirteen of the leading universities as being opposed to the great weight of authority. It is in apparent conflict with the decision of the United States Supreme Court in the Oklahoma Bank Guarantee case and with a long line of State and Federal decisions upholding statutes that impose liability without fault. The New York precedent was expressly disregarded by the Supreme Court of Washington in upholding the stringent compulsory accident insurance act of that State and by the Supreme Court of Montana in passing upon the compulsory coal miners' insurance act. It did not deter Arizona from passing, nor the Federal Employers' Liability Commission from recommending, a compulsory statute.

It must be conceded, of course, that the quasi-elective plan is better supported by the adjudged cases. Statutes establishing such a system have been upheld by the courts of last resort in Massachusetts, Ohio, and Wisconsin, and by an inferior tribunal of New Jersey; and no such act has thus far been held invalid. To be effective, however, a quasi-elective plan must impose penalties upon rejection which amount to coercion. This point was

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glossed over by the friendly courts which have rendered favorable decisions; but a reactionary tribunal, like the New York Court of Appeals, would have little difficulty in holding that such a law as that of Illinois or New Jersey practically imposes liability without fault and hence works a deprivation of property without due process of law. On the other hand, the courts of Massachusetts, Ohio, and Wisconsin laid much stress upon the police power as validating the acts of those States — a validation not needed for a genuinely optional law. It would seem that the very great advantages of compulsion would make a much clearer case of police legislation. If "the power to promote the public welfare by restraining the use of liberty and property" will justify any legislation upon the subject it will surely justify that which experience and expert opinion have approved as most likely to secure the ends proposed. Especially strong, on constitutional grounds, is the case for a compulsory mutual or State insurance act which might be construed as imposing a tax upon industry, proportional to the hazards thereof, to compensate injuries arising out of occupational risks.

If a quasi-elective system is to be adopted, the plan proposed by a majority of the Iowa commission appears altogether admirable. That plan provides: (1) that election under the statute shall be presumed until and unless formal rejection is made, which rejection must be annually renewed; (2) that as to an employer who elects to stand upon his rights at common law the defenses of fellow-servant, contributory negligence, and assumption of risk shall be wholly abrogated; (3) that such employer shall have the burden of proof to show that an injury

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sustained in his service was not due to his negligence; (4) that where the employee does, and the employer does not, reject the compensation act, the existing defenses and the existing rule as to burden of proof shall be saved; and (5) that the compensations provided shall be exclusive of every other right or remedy as to employees and their dependents. But for injuries caused by the employer's failure to comply with the safety statutes or the lawful orders of the Industrial Commission, liability exists to the Association hereinafter described.

These provisions should be sufficient to bring most employers within the statute. The requirement of affirmative rejection is preferable to the plan of affirmative election in that it enlists inertia on behalf of the law. The abrogation of contributory negligence — the most important defense in liability cases — and the reversal of the burden of proof (which last appears to be original with the Iowa Commission) should prove especially efficacious. It needs no gift of prophecy to forecast the verdict of a jury in a liability suit when no defense can be interposed and the employer has the burden of proof to show that the injury was not due to his negligence. Liability insurance rates under the common law as thus modified would undoubtedly be higher than under the compensation act, which is the strongest argument that can be addressed to employers. There is little fear that employees will wish to reject the compensation scheme, and any who might do so would doubtless be discharged.

SCOPE OF INDEMNITY PROVISIONS

The Iowa Commission has recommended that the coercive features of the act which is proposed be confined to the State and its subdivisions and to private establish-

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ments "where five or more employees [exclusive of officers or clerks] are employed in the same general employment and in the usual and ordinary transaction of the business". In practice such a provision would exclude agriculture, domestic service, the very small establishments of all kinds, and casual workmen not employed in the way of business.

On grounds of expediency the above limitations probably should be accepted. Ideally, indeed, indemnity should be provided for all work injuries. The painter who falls from a ladder while employed by a householder for a single day, the farm laborer who loses his hand in a corn shredder, the chauffeur who is crippled in a road accident, the blacksmith's helper whose eye is put out by a flying sliver of white-hot iron, have the same equitable claim to compensation as the railway trainman who is injured in the course of duty. Moreover, these employees stand in serious need of protection. Thanks to modern machinery, agriculture has become a hazardous occupation. Small establishments notoriously are deficient in provisions for the health and safety of employees. Practically, however, the Commission's recommendation is justified by the present state of public opinion. A bill which should attempt to include farmers and small employers would have little chance of passage. It would be difficult, moreover, to provide for a large number of small employers and of casual employees in the early stages of an insurance system. Ultimately every industrial wage-worker should be protected; but until the administrative machinery is well developed it would probably be unwise to attempt an all-inclusive act. If any one is to be excluded, the limitation to establishments employing five or more persons is preferable to the ex-

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press exclusion of particular employments. Large farmers and wealthy households may well be required to insure their employees.

The intermediate employer plays an important rôle in modern industry. Employers of this class are continually shifting and often are financially irresponsible. The principal undertaker ought, therefore, to be made expressly liable for injuries sustained by the employees of any contractor or sub-contractor who undertakes or performs any part of the ordinary work or business of the principal upon the principal's premises. Such appears to be the intent of section seven of the bill drafted by the Iowa Commission, though the language employed is perhaps not so unambiguous as could be wished. Section eight sufficiently guards against contracting out of liability under the proposed act.

SCHEDULE OF COMPENSATION

Full compensation upon the principle of occupational risks includes (1) the reasonable expenses of burial for all who die as the result of work accidents; (2) the cost of alleviating the suffering of the injured and of restoring their earning capacity where practicable; (3) the net wage loss of the disabled during the entire period of incapacity; (4) the net income loss of those dependent upon the deceased throughout the period of such dependency. Anything less than this is, by so much, less than justice.

There is little to criticize in the Iowa Commission's proposals under this head. Friends of indemnity legislation should see to it that the compensations provided in the bill are not diminished by amendment.

Imperative convention demands what is styled a "de-

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cent burial" for the dead. All who are familiar with the facts know that this convention often imposes a heavy burden upon working-class families. The hardship is all the greater in case of an unexpected death which deprives the family of its main source of income at the very time when it is called upon to meet an extraordinary expense. Hence the Commission has wisely provided that funeral expenses, not to exceed $100, shall be paid in all cases of death as the result of work accidents.

The expense of caring for the injured and restoring their earning capacity is peculiarly a cost chargeable to the industry which occasioned such expense. Not justice only, but every consideration of expediency as well, requires that medical, surgical, and hospital care, medicines, and therapeutic supplies shall be furnished in all cases of work injury. German experience shows that the provision of medical relief by the employer secures prompt and expert treatment, prevents disability from minor injuries, shortens the period of incapacity in more serious cases, and aids in detecting simulation or malingering. Under such a system large employers will find it to their interest to keep a medical attendant at the works to dress minor wounds, disinfect cuts and bruises, and render first aid. The limitation of medical aid to four weeks and $100, as proposed by the Iowa Commission, is unfortunate. Medical attendance should not be cut off until the victim is cured so far as science can effect a cure.

Two-thirds of average earnings is the amount fixed upon by the German government, after careful inquiry, as being full compensation for total incapacity. Some deduction from full wages is just since the invalid is spared the cost of tools, working clothes, street-car fare,

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and other expenses entailed by his occupation. The pension of sixty per cent adopted by the Iowa Commission may fairly be considered a just minimum.

On the other hand, the fixed maximum of twelve dollars per week can not be justified by any equitable consideration. The idea of imposing a maximum was borrowed from England, where charity rather than indemnity is the basis of relief. A brick-layer's or linotype operator's family whose weekly income is reduced from $35 to $12 may not be driven to the almshouse, but their standard of life will be injuriously lowered and their children will be denied educational opportunities which an adequate indemnity would have secured to them. It should be understood that the purpose of compensation is not simply to prevent dependence but to place the burden of work accidents where it properly belongs — upon the industry that caused them. Proportionate indemnity to skilled workmen is not only just; it also affords added incentive to prevent accidents. Nor will the cost of such indemnity be a higher percentage of pay roll than in the case of unskilled workers. A similar criticism applies to the proposed reduction of invalid pensions after the lapse of 400 weeks. A man totally incapacitated for life is no less helpless eight years after the injury than he was at the beginning. Pensions of not less than sixty per cent of average wages ought, therefore, to be allowed during incapacity. Full wages should be paid in all cases of such utter helplessness as to require the constant attendance of another person.

No serious objection can be made to the "waiting period" of two weeks, proposed by the Iowa Commission. True, the loss of two weeks' wages is a hardship to any working-class family. At the same time a waiting period

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of moderate length is dictated by urgent practical considerations. The immense majority of work injuries are of a trivial character, entailing disability, at most, for but a few days. If indemnity were allowed for every such injury, not only would the labor and cost of administration be enormously increased, but the temptation to simulate, or to prolong, incapacity would ofttimes prove irresistible. It might be well to provide, however, that in cases of proved permanent disability compensation should date from the beginning.

Cases of temporary partial incapacity do not appear to be covered in the Commission's bill. It is provided that for "disability partial in character and permanent in quality the compensation shall be based upon the extent of such disability"; but whether earning capacity in an employment other than that in which the injured was engaged at the time of the accident shall be considered in estimating the extent of disability is not stated. Greater explicitness would remove doubt and prevent litigation. Fixed compensations are, by the Commission's bill, allowed for certain specified injuries. This provision would greatly reduce the trouble and uncertainty of administration, but it might work injustice in individual cases. The loss of a thumb or even of an eye is a much more serious disablement in some employments than in others. Still, the advantages of fixed compensation for such injuries probably outweigh the objections.

Pensions to dependents are by the Iowa Commission's bill limited to three-fifths of the average wages of the deceased, but not more than $12 nor less than $5 per week for a period of three hundred weeks. The same objections apply to these limitations as to the others already discussed. Justice not charity, income loss not need, is

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Legislative Section

the equitable basis of accident indemnity. Even from the standpoint of charity, however, there is no justification for the arbitrary termination of either invalidity or dependent pensions. Need in either case may be as great after the lapse of six years as at the time of the accident. Pensions ought to continue throughout dependency — a widow's during widowhood, a child's at least until the full age of sixteen years.

But, while the compensations proposed by the Iowa Commission are lower than full justice requires, they are probably as high as would be expedient at the outset. In a national system, like that of Germany, substantially the whole cost of accident indemnity can be passed on to the consumer. But Iowa's manufacturers and coal operators must compete with those of adjoining States, and so relatively high compensations would place them at some disadvantage in the market. Inasmuch as no American Commonwealth has yet accepted the principle of full indemnity upon the basis of occupational risk, Iowa can not well do so at present. But that principle ought, nevertheless, to be regarded as the standard which the indemnity system should gradually approach.

Inadequate as are the proposed indemnities, as seen from the worker's point of view, employers may regard them as unduly high from the standpoint of interstate competition. It will be worth while to sift this latter contention with some care.

In the first place, the facts should be examined. It will be observed from Table IV that the compensations proposed by the Iowa Commission are appreciably lower than those of Wisconsin, and not higher, upon the whole, than those of Illinois. Kansas allows somewhat lower

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benefits, though insurance rates under the compensation act of Kansas are, strangely enough, higher than in either Illinois or Wisconsin. Upon the whole, Iowa employers under the Commission's bill would be at no disadvantage in competition with those of Illinois, Kansas, or Wisconsin, even were stock company insurance to be continued in Iowa as in the other States. If the Commission's mutual insurance plan is adopted, and particularly if the State assumes the administrative expenses thereof, as it ought in fairness to do, the actual cost of accident indemnity in this State will be less than in any of the above-mentioned Commonwealths. With respect to other adjacent States, compensation laws are pending in Minnesota, North Dakota, Nebraska, and Missouri — though what sort of legislation, if any, will be enacted can not at this writing be foretold.

TABLE IV

Compensations	Iowa Commission's Bill	Illinois	Kansas	Wisconsin
Funeral	All cases, $100	No dependents only, $150	No dependents only, $100	No dependents only, $100
Medical Aid	4 weeks, $100	8 weeks, $200	None	90 days
Death Benefits to Total Dependents	60% of wages for 300 weeks. Maximum, $3600 Minimum, $1500	50% of wages for 8 years. Maximum, $3500 Minimum, $1500	3 years' wages. Maximum, $3600 Minimum, $1200	4 years' wages. Maximum, $3000 Minimum, $1500
Total Disability Benefits	60% of wages for 400 w'ks. Limits $12 and $5 per w'k. After 400 w'ks, $10-$25 per mo.	50% of wages for 8 yrs. Limits $12 and $5 per w'k. After 8 yrs., 8% of death benefit annually	50% of wages for 10 years. Limits $15 and $6 per week	65% of wages for 15 years. Maximum total, $3000
Temporary Disability Benefits	After 2 weeks, 60% of wages. Limits $12 and $5 per week	After 1 week, 50% of wages. Limits $12 and $5 per week	After 2 weeks, 50% of wages. Limits $15 and $6 per week	After 1 week, 65% of wages. Limits $9.38 and $4.69

In the second place, it is easy to exaggerate the importance of indemnity rates as a factor in interstate competition. Uniform costs of production, over any large area, are a fiction of closet economics. Every community has its own particular advantages and disadvan-

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tages in the way of wages, freight rates, market facilities, and the cost of fuel and materials. Compared with these items accident indemnity is but a bagatelle. A difference of $1 per $100 of pay roll would amount to less than two cents per ton of coal. Moreover, even under the common law, liability insurance varies as much as three hundred per cent from one State to another. At the present time Minnesota, the two Dakotas, Nebraska, and Missouri retain common law liability; while Kansas, Illinois, and Wisconsin have compensation acts of varying scope and widely different rates of indemnity. To equalize competitive conditions with all these neighbors is out of the question. The attempt would be the more futile in that, as already seen, four adjoining common law States are likely to adopt compensation systems during the current legislative year. In view of the action taken and to be taken by the several States, uniformity is not to be expected for a good many years to come. The General Assembly of Iowa ought not to be deterred, therefore, by such considerations as the foregoing, from adopting a reasonably adequate scale of compensation.

BURDEN OF INDEMNITIES

The Iowa Commission's bill places upon the employer the entire burden of providing the indemnities proposed. Strong opposition to this feature of the bill may be expected from those who believe that workmen should bear part of the expense of accident insurance. The arguments most often advanced in favor of requiring contributions from employees are three in number. These will be discussed in the inverse order of their importance.

First. It is urged with much earnestness, though not by the spokesmen of wage-earners, that if insurance is

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provided wholly at the employer's expense the insured employees will feel themselves the recipients of charity and will suffer a lesion of their manhood and self-respect. This argument, however, overlooks the substantial facts of the case. The hazards of industry are as much a part of the worker's undertaking as the labor he performs and indemnity for injuries occasioned by these hazards is no more a matter of charity than are ordinary wages.

Second. It is contended that under a contributory system employees collectively will take greater interest in accident prevention and especially in detecting fraudulent claims. The contention appears to be sound as applied to the German system under which temporary disability is cared for by workingmen's sickness insurance societies. But the German analogy is inapplicable to the more common forms of State, employers' mutual, or stock company insurance for the very obvious reason that none of these plans provide any machinery for collective action by insured workmen. Unless the contributions of employees are paid into a separate fund, allocated to the relief of temporary disability and administered by local employees' organizations, no great results in the direction contended for can be expected. There is much to be said in favor of such a plan, but it ought to be combined with a system of sickness insurance.

Third. Conceding that the whole cost of accident indemnity ought ultimately to be borne by consumers, it is clear that this result can never be attained under any system confined to the limits of a single State. So far as the expense of indemnity insurance exceeds that of adjoining States Iowa employers in competitive industries will be unable to shift the burden to the purchasers of

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their products. It is on this ground that Ohio permits employers to deduct ten per cent of their premiums from the wages of their employees. But so small a deduction is of little consequence. The writer is informed by the Ohio Liability Board that most employers who have accepted the State insurance scheme pay the entire premiums thereunder rather than incur the extra bookkeeping, and more particularly the irritation, caused by exacting the contributions from their men. A substantial contribution from employees to a pure accident indemnity fund would violate the fundamental principle that the pecuniary burden of occupational risks ought not to be imposed upon those who must, in any case, bear the far heavier burden of grief and pain. Moreover, if workmen are to contribute substantially to accident relief they would justly insist upon due representation in the management of the funds.

If the contributory plan is adopted, the workers' contributions should be set apart as a sickness and temporary disability insurance fund, charged with the payment of invalidity benefits for a certain number of weeks. Medical relief to the injured ought to be provided at the employers' expense and benefits paid in cases of permanent disability should be re-imbursed to the fund. The workmen's fund should be administered either by local workingmen's societies or by the State Insurance Department through the medium of such societies. This arrangement would be compatible with either State or employers' mutual accident insurance.

INSURANCE

Compulsory, economic, and efficient insurance is vital to the success of a compensation act. If insurance is not

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obligatory there will be many failures of uninsured employers and, consequently, many unindemnified injuries. Such cases are by no means rare in England, and they would be relatively much more numerous in Iowa where industrial conditions are far less stable than in the old world. Even a requirement like that of New Hampshire or Michigan, that the employer make a showing of solvency, is not a sufficient safeguard. A firm which is entirely solvent at a time of industrial expansion may fail at the first crisis. Nothing short of an indemnity bond would provide adequate security as respects ordinary commercial enterprises — and such a bond would be a clumsy and expensive type of insurance. Interstate railways, however, so far as they are subject to the statute, might well be allowed to carry their own risks.

That the insurance required should be at once economical and efficient for accident prevention is too plain for argument. Stock company insurance meets neither of these requirements.

The wastefulness of commercial liability insurance has already been adverted to in these pages but the point is so important as to deserve further emphasis. In Great Britain, where the simple compensation plan has been tried long enough to afford a fair test, the underwriters' profits and expenses, advertising, solicitor's commissions, adjusters' salaries, attorney's fees, and court costs absorb one-half of the premiums paid, or add one hundred per cent to the cost of compensation. There is no reason to expect a more favorable result in Iowa. Waste inheres in the competitive character of the business. Every company which writes this class of insurance in the State must maintain a staff of agents, adjusters, inspectors, and general counsel practically

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sufficient for the entire business if conducted by a single underwriter. Travelling allowances, as well as salaries are multiplied by this useless overlapping. There is a similar multiplication of "overhead" or office expenses. Further, no employer, individually, has much incentive to protect the insurer against fraudulent claims or excessive charges for medical service — both of which are large sources of loss to the liability companies.

Competition is even more fatal to accident prevention. The stock companies, to be sure, have done good work in diffusing information as to safety devices and they also make some attempt to adjust insurance rates to establishment risks. But their efforts in the latter direction have been neutralized by rate cutting. Careful inquiry by the Industrial Commission of Wisconsin has shown that premiums in that State range from full manual rates to thirty-five per cent thereof — the amount of the rebate depending more upon the size of the establishment and the bargaining ability of the manager than upon any determinable safety conditions. That similar rebating prevails in Iowa is doubted by no one who is at all familiar with the facts. Obviously, under such conditions no adequate pressure can be exerted upon employers who neglect safety requirements. The employer who finds himself penalized by one company simply seeks insurance with a more lenient competitor.

European countries have found an adequate remedy in compulsory mutual government insurance. In Germany expenses of all kinds — including accident prevention — absorb but fourteen per cent of the premiums or add only seventeen per cent to the cost of indemnity. In Norway the proportions are twelve and fourteen per cent respectively. In other words, benefits which in

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Great Britain cost the employer $3.72 per $100 of pay roll cost, cost $2.16 in Norway, and $2.64 in Germany. The remarkable efficiency of the German mutuals for accident prevention was sufficiently discussed in another connection.

There is no reason why a State department or an employers' mutual, membership wherein is obligatory upon all employers subject to the compensation act, should not approximate these favorable results. Such department or association would need no advertising and would have no agents' commissions to pay nor profits to provide. Its outlays for litigation should be small, and it would need very few adjusters instead of the very expensive staffs of the several liability companies. Its administrative costs, too, might well be borne by the State, whereas a similar subvention could hardly be granted to commercial companies. Membership being compulsory, full reserves on the capitalized liability basis would not be necessary. Assessments could be based on current expenditures, with only a moderate safety reserve, and could be raised when necessary. By this means, the minimum of capital would be withdrawn from business enterprises. Premiums would be low at first and would only gradually increase, thus throwing the least possible strain upon industry. Lastly, and most important of all, the department or association could enforce effective penalties, in the way of higher rates, upon those employers who failed to maintain standard safety conditions.

The foregoing advantages can not be attained in anything like full measure unless insurance in the department or association is exclusive and compulsory. Insurance is emphatically a "business of increasing re-

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turns'' in that the proportion of general expenses bears an inverse ratio to the volume of transactions. Insofar, then, as competition limits the membership of the department or association, insurance costs will be enhanced. Besides, many of the wastes of competition will become inevitable — duplication of agents and adjusters, advertising, and perhaps commissions. Both sources of loss will be augmented by the efforts of stock companies, through specially devised, limited liability policies, to secure the preference risks and to throw the undesirable applicants upon the mutual or State fund. The effects of such competition have been felt in both Massachusetts and Ohio, and are likely to appear in aggravated form under the Michigan plan of four options — which seems specially designed to give the State fund a monopoly of bad risks. A further drawback is the necessity of full reserves under any optional system. Assessments upon the current expenditures basis will inevitably increase with the lapse of time, with the result that subscribers will desert the fund. Finally, if any choice of insurers is admitted, safety standards will be fixed, as now, by the most lenient underwriter.

Even exclusive mutual or State insurance, if coupled with a quasi-elective act, will not fully reach the end in view. The stock companies, shut out from competition under the statute, may offer special inducements to employers who reject the compensation plan. This they are strongly tempted to do because of their heavy stake in the outcome. If the German or Norway plan should be generally adopted the liability companies will be driven from the field, whereas if the English example is followed they will flourish as never before. They could even afford to accept business in Iowa at a loss in order to

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influence legislation in other States. Such tactics appear to have been adopted in Ohio, where employers who reject the State insurance plan are insured at one-third of the Illinois liability rates, notwithstanding that the legal liability of such employers is higher in the former State than in the latter. Largely because of this action, only 25,000 employees have thus far (November, 1912) been brought within the protection of the Ohio statute — a very small proportion for the fourth industrial State in the Union.

Compulsory insurance in a State department or an employers' mutual association appears, therefore, to be the plan best calculated to secure the great ends of indemnity legislation. No other mode provides equal benefits at anything like the same costs or promises anything like the same efficiency for the saving of human life and limb.

As between mutual and State insurance, the balance of advantages probably lies with the former. The great objection to the State plan, in Iowa at least, is the danger of political manipulation. If authority to classify employments and fix premiums is vested in an administrative board, the administrators have a dangerous power of coercion and favoritism. If classes and rates are prescribed in the statute, the system is too inflexible to meet the requirements of a rapidly changing industrial situation. A mutual association not only avoids this difficulty: it should prove more acceptable to employers and be more heartily supported by them. It is probable, too, that a mutual, particularly if divided into semi-autonomous groups, would be more effectual for accident prevention.

If the mutual plan is to be adopted, the scheme pro-

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posed by a majority of the Iowa Employers' Liability Commission measurably meets the requirements of the case. This scheme involves the creation of a self-governing Employers' Indemnity Association, of which all private employers who are within the terms of the statute and who have not rejected the act become *ipso facto* members. A board of ten directors is to be appointed by the Governor for the first year and thereafter elected by the members. Other officers, and all questions of internal organization, are to be provided for by the by-laws of the Association. The Association is empowered to issue policies of indemnity to its members, covering all liability under the compensation act, and to pay all compensations, make all settlements, and defend all suits under said act.

The Board of Directors is authorized, subject to the approval of the Industrial Commission hereinafter described, to distribute the members of the Association into risk groups, to determine and collect the assessments for each group and each establishment, to adopt and enforce rules and regulations for accident prevention, and, inferentially at least, to increase or diminish the assessments of each establishment according to the safety conditions maintained therein.

The Association is required to set aside each year ten per cent of the gross premiums collected until it shall have accumulated a reserve fund of one million dollars, which shall thereafter be maintained. Pending such accumulation, the Association must reinsure its risks in one or more liability companies approved by the Industrial Commission.

The greatest weakness of the foregoing plan inheres in the quasi-elective feature of the proposed act. Apart

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from this unavoidable weakness, the Iowa Commission's proposals appear susceptible of improvement in certain details. In the first place, the State as the final almoner of widows and orphans, and of indigent invalids, might well defray the administrative expenses of the Association. Massachusetts makes an annual appropriation of $15,000 for this purpose; surely some suitable amount ought to be appropriated by the General Assembly of Iowa. The State should also contribute something for the first ten years toward the required reserve. The public subvention here proposed is a measure of bare justice to employers. In nearly all European countries half or more of the administrative expenses are defrayed by the government. Switzerland contributed $1,000,000 to the accident reserve fund. Since, as has already been pointed out, Iowa employers will not be able to incorporate the entire cost of indemnity in the price of their products, an equitable distribution of the burden can only be effected in some such manner as is here suggested.

In the second place, the distribution of votes, in the general meeting seems to give undue weight to small employers. While the Association should be safeguarded against the dominance of a few great employing corporations, it would appear no more than reasonable that those who will be called upon to pay the bulk of the assessments should have a controlling voice in the election of officers and the determination of policies. One vote for each one hundred insured employees, with a provision that each member shall have at least one vote and that no member shall cast, by his own right or by proxy, more than fifty votes would perhaps be fairer than the arrangement proposed.

Again, the reserve fund of one million dollars ap-

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pears to be larger than would be necessary under a strictly compulsory system; but it may not be greater than safety requires under the quasi-elective plan proposed.

Lastly, a single association, so heterogeneous as would necessarily be the case, might prove cumbrous in practical operation. It might be advantageous, therefore, to divide the Association into semi-autonomous groups, as for example, manufacturers (which term should be broadly defined), coal mine operators, gypsum and clay mine operators, quarrymen, building and construction contractors, interurban and street railways, and a miscellaneous group. Each group could administer its own insurance and make its own safety rules, subject to the supervision of the Association and subject to the requirement that its members pay their due proportion to the common reserve fund. It would probably be unwise to attempt such grouping in the act itself, but the Association might well be empowered to provide therefor in its own constitution and by-laws.

Finally, subscribing employers should expressly be protected by the Association against damage suits by employees who reject the compensation plan. Such probably is the intended effect of section fifty-five of the Commission's bill, but the language on this head might well be made more explicit.

ADMINISTRATION

It can not be too strongly emphasized that the success of any system of accident indemnity will largely depend upon the provision of adequate administrative machinery. Many of the acts passed by other States fail at this point. Iowa should not make the same mistake.

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State supervision is all the more essential if the Commission's insurance plan is to be adopted. Workmen might well object to a compensation system administered solely by employers.

The Iowa Employers' Liability Commission has recommended the creation of a permanent Industrial Commission clothed with fairly wide supervisory and administrative powers. The functions of the proposed Industrial Commission include: (1) the approval of agreements between employers and claimants as to compensation for work injuries, (2) the adjudication of disputes, (3) the making and enforcement of rules for executing the provisions of the compensation act, (4) the approval of risk ratings, insurance rates and safety rules adopted by the Employers' Indemnity Association, and (5) the securing and compiling of accident records. For the last named purpose every employer is required to keep a record of all injuries sustained in his employment, to report each accident to the Industrial Commission within forty-eight hours after its occurrence and to make a supplemental report upon the termination of disability. If State insurance is adopted, the Industrial Commission will, of course, exercise still wider powers.

To the foregoing functions, a majority of the Iowa Liability Commission proposes to add those now vested in the State Bureau of Labor Statistics. This suggestion, borrowed from Wisconsin, is eminently worthy of adoption. To begin with, such a consolidation would effect a notable saving in office expenses and salaries. To make the existing Bureau as efficient as those of Minnesota or Massachusetts, the Commissioner's salary would have to be doubled and the number of his assistants largely increased. It would be cheaper to abolish the Bureau and

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vest its duties in the high grade Commission which is, in any case, indispensable to the success of the compensation act. Moreover, unified administration of the various labor laws is highly desirable. A main purpose of the compensation act being the prevention of accidents, the safety laws which have the same end in view ought obviously to be administered by the same board. Factory inspection necessarily carries with it the enforcement of the child labor laws and of other laws relating to places of employment. It would be absurd to maintain a separate bureau for the remaining functions of the Labor Commissioner. The same reasoning applies, of course, to the State Mine Inspectors.

A further, and perhaps the greatest advantage of the Industrial Commission plan is the possibility of supplementing the present inadequate safety laws by administrative orders. The attempt to embody safety regulations in statute law has never yielded satisfactory results, in Iowa or elsewhere. It is not enough to prescribe that "all machinery shall be properly guarded." What constitutes a proper guard for a line shaft or a band saw depends upon a variety of conditions which no legislature can anticipate. What is needed is a precise and detailed definition of the proper and requisite guards for each kind and type of machine under given conditions. The like may be said of methods of work, working clothes, warning signals, ventilation, dust removal, and all the other manifold conditions that affect safety and sanitation. Such details are too complex, varied and rapidly changing to be dealt with by the General Assembly. Nor can the large discretion necessary be safely vested in factory inspectors or a single-headed bureau. But a commission, clothed with quasi-judicial functions, can

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well be empowered to frame a detailed safety code and, after hearing, to enforce compliance therewith in particular establishments.

The Industrial Commission ought, therefore, to be vested with the administration of the compensation act, the factory, child labor, fire escape, employment agency, and mine laws and all other labor legislation enacted or to be enacted. It should be empowered, after hearing, to make general or special orders, supplementary to the safety statutes, specifying in detail the mode of guarding machinery and places of employment, and, generally, to make all rules and regulations reasonably necessary to secure the health, safety and comfort of operatives. It should be authorized to appoint a sufficient number of clerks, statisticians, inspectors, and experts to carry into effect the powers entrusted to it. The Commission's employees, in all proper cases, should be subject to civil service rules similar to those now applicable to State Mine Inspectors.

An administrative body possessing the foregoing powers could serve effectually for the great work of accident prevention. In consultation with employers and workmen, the Industrial Commission could frame an efficient safety and health code covering, for example, building and construction operations, gypsum and clay mines, quarries, bakeshops, steam boilers, and harvesting machinery, as well as those employments and mechanical contrivances to which the present laws apply. It could maintain a traveling "safety exhibit", for the education of both employers and employees. In time the full accident records compiled in the administration of the insurance law would afford a scientific basis for accident prevention. Meanwhile, and above all, the insurance pre-

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miums of each establishment, whether fixed by the Commission or by the Indemnity Association, would be based upon the degree of compliance with the safety code as shown by the inspectors' reports. Accident prevention would become a business proposition.

To protect the administrative board from political manipulation, the Iowa Employers' Liability Commission has proposed that not more than two members of the Industrial Commission shall be members of the same political party, that appointments shall be made by the Governor and Senate from a list of fifteen names, submitted by the Supreme Court, that all recommendations for the appointment of particular persons shall be in writing and open to public inspection, and that political activity by members of the Commission and the making of promises by candidates for appointment shall be prohibited.

The proposed method of selection can not be commended. Duties extraneous to its proper office ought not to be imposed upon any court and the nomination of administrative appointees is far from being a judicial function. The danger that the Supreme Court would thereby be dragged into politics is at least as great as the chance that such a method of appointment would bar political influence. The Supreme Court, besides, has no special fitness for the duty which would thus be thrust upon it. Judges are particularly qualified to choose a commission of lawyers, but legal talent is not the most essential requisite for the administration of the compensation act.

The following plan appears better calculated to attain the ends proposed:— The chairman of the Industrial Commission shall be appointed by the Governor, by and

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with the advice and consent of the Senate, from a list of three qualified attorneys at law submitted by the Supreme Court. One Associate Commissioner shall be similarly appointed from a list of three competent persons nominated by the Iowa Federation of Labor; and one from a like number nominated by the Board of Directors of the Employers' Indemnity Association. Pending the formation of said Association, a temporary appointment shall be made from three persons of whom two shall be nominated by the Iowa Manufacturers' Association and one by the Iowa Coal Operators' Association. If State insurance is adopted, the last-mentioned mode of nomination could be made permanent.

Such a plan would secure proper representation to the parties most interested in the just and efficient administration of the law. Both the Association and the Federation are exceptionally fitted to choose capable administrators, and their heavy pecuniary stake should effectually prevent the presentation of unfit or inferior candidates. The public interest would be sufficiently safeguarded by this method of appointment. The chairman under the plan here suggested would be a lawyer of ability, able to act as *ex officio* counsel to the Commission, and would serve as umpire in any case of disagreement between the two associates.

The other safeguards proposed by the Iowa Commission are eminently proper. It might be well to add that no member of the Industrial Commission shall be a delegate or alternate to any political party convention. The phrase "or espouse the election or appointment of any person for any political office" appears somewhat ambiguous. More explicit language might well be employed.

The term of ten years proposed for members of the

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Industrial Commission should make appointment thereon attractive to high-grade men, should give the Commissioners time to acquire expertness in their work, and should act as an additional bar against political influence.

All the pains expended in guarding against unfit appointments will be but wasted effort unless ample means are provided for the support of the Commission. Experience has abundantly shown that competent men can not, as a rule, be secured for meager salaries. The chairman should be paid not less than $5,000 and the two associates not less than $4,500 each. An annual appropriation of at least $50,000, including the Commissioners' salaries, should be made for the work of the Industrial Commission. This would enable the Commission to provide sufficient clerical assistance, to increase the present wholly inadequate number of factory inspectors, to maintain a travelling "safety exhibit" in the interest of accident prevention, to employ a consulting actuary to pass upon the risk tariffs of the Indemnity Association, to appoint a claim investigator, and to pay the costs of arbitration cases which ought in justice to be borne by the State.

ADJUDICATION OF CLAIMS

The bill proposed by a majority of the Iowa Commission contains provisions in reference to the adjudication of claims which may be briefly summarized.

If the employer and the injured shall reach an agreement with regard to compensation under the act, the memorandum of agreement shall be submitted to the Industrial Commission and, if approved by it, shall for all purposes be enforceable under the statute. But no agreement shall be approved unless it conforms to the provisions of the act.

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If the parties fail to agree, each may choose an arbitrator and the Commission must designate one of its members to act as chairman. The Committee of Arbitration, after such investigation as it deems necessary, makes an award which, unless a petition for review is filed by either party within five days, becomes enforceable under the act.

If a claim for review is filed, the Industrial Commission shall hear the parties thereto and may revise the decision of the Arbitration Committee in whole or in part or may refer the matter back to the Committee for further findings of fact.

When any party in interest presents a certified copy of an order or decision of the Commission, or a decision of an Arbitration Committee from which no claim for review has been filed within the time allowed therefor, or a memorandum of agreement approved by the Commission, to the district court of the county in which the injury occurred, said court shall enter a decree in accordance therewith.

No appeal is allowed from any decree entered as above upon any question of fact, nor from any decree based upon a decision of an Arbitration Committee or a memorandum of agreement.

Fees of attorneys and physicians for services under the act are subject to the approval of the Industrial Commission.

The foregoing provisions appear well calculated to secure "cheap and speedy justice". The device of arbitration committees is necessary to reduce the demands upon the Commission's time. It may even be found requisite to authorize the appointment of a claim adjuster or examiner to serve on such Committees. Espe-

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cially commendable are the elimination of jury trial and the limitation of appeals. To minimize litigation is a prime object of compensation laws.

Under the bill as drawn, the costs of arbitration are divided between the parties thereto. It would seem but reasonable that such costs (except attorney's fees) should be borne by the State. The indemnities to the injured ought not to be diminished, nor the burden upon employers increased, by administrative expenses. The Committee of Arbitration should be empowered, however, to tax such costs to the losing party when, in its judgment, equity so requires.

FINAL ESTIMATE

The foregoing survey indicates that the bill endorsed by a majority of the Iowa Employers' Liability Commission measurably fulfils the standards of indemnity legislation suggested by experience at home and abroad. Its gravest shortcomings are traceable to a single feature — the quasi-elective plan. Other criticisms implied in this discussion might be met without any radical alteration of principle. A similar remark holds of the chief objections likely to be raised by employers.

One member of the Iowa Commission, Mr. W. W. Baldwin, submitted a separate bill for a compulsory compensation act after the English model. The proposed compensations are similar to those of the British law and are, consequently, lower than those recommended by a majority of the Iowa Commission. Insurance is not required, and compensation claims are given no preference over other liabilities of the employer; nor are payments made exempt from attachment for debt. Disputes under the proposed act are to be determined by the dis-

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trict court, by summary process, subject to appeal only on questions of law. The county attorney is required to represent claimants in court proceedings, and medical attention to the injured is to be furnished by the county as a part of its poor relief. No administrative machinery is provided. There is no provision looking to accident prevention, nor any requirement that accidents be reported. Settlements not in accordance with the act are declared invalid, but sufficient means is not provided to make this declaration effective. In view of conclusions already reached, detailed discussion of this bill is unnecessary.

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